

**Office of Chief Counsel  
Internal Revenue Service  
Memorandum**

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CC:NTA:SLHartford

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date: January 05, 2009

to: Joe Zelle  
(Director, Field Systemic Advocacy)

from: Susan L. Hartford  
Technical Advisor to the Special Counsel  
(National Taxpayer Advocate)

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subject: ITINs for Deceased Individuals

This Chief Counsel Advice responds to your request for assistance. This advice may not be used or cited as precedent.

This memorandum responds to your request for advice regarding whether the Internal Revenue Service can issue Individual Taxpayer Identification Numbers (ITINs) for deceased applicants.

Several months ago, you sought guidance regarding the Service's refusal to issue ITINs to deceased individuals. As you have explained, often an ITIN is needed for a recently deceased taxpayer, spouse, or dependent, in order to process and receive certain tax benefits, such as the dependency exemption or a particular filing status.

Section 6109 (c) provides, in part, that "the Secretary is authorized to require such information as may be necessary to assign an identifying number to any person." Treas. Reg. § 301.6109-1(d)(3)(iii) states, "under procedures issued by the Internal Revenue Service, an IRS individual taxpayer identification number will be assigned to an individual upon the basis of information reported on Form W-7 and any such accompanying documentation that may be required by the Internal Revenue Service. An applicant...must submit such documentary evidence as the Internal Revenue Service may prescribe in order to establish alien status and identity." Section 6109 and the corresponding Treasury regulations do not preclude the Service from issuing ITINs to a decedent who needs an ITIN for a legitimate tax reason. We also acknowledge,

however, that nothing in the Code or the Treasury regulations compels the Service to issue ITINs to a decedent.

The restrictions in ITIN issuance implemented during the most recent overhaul of the ITIN program were intended to deny ITINs to those without a tax need, not those with a legitimate tax need. The Service will determine whether there are cases in which the benefits outweigh the policy concerns of issuing ITINs to decedents. It is our understanding that the Service has decided to consider ITIN applications for deceased dependents on a case-by-case basis in an effort to identify the cases where the ITIN should be issued.

In conclusion, the issuance of ITINs to deceased taxpayers is a business decision to be made by the Service rather than a decision dictated by section 6109 and the corresponding Treasury regulations. We have coordinated our response with the Office of Division Counsel, Wage and Investment and the Office of the Associate Chief Counsel, Procedure & Administration. Thank you for your patience while we coordinated with those offices.

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.

Please call me at (202) 622-7852 if you have any further questions or concerns.

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